IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2242 OF 2005

Smt.Rashmi Harish Ahuja. ... Petitioner.

V/s.

Union of India and others. ... Respondents.

Madhur Baya for the petitioner.

R.V.Govilkar with Rui Rodrigues for the respondents.

CORAM : V.C.DAGA AND J.P.DEVADHAR, JJ.

DATED : 22nd September 2005.

P.C. :

. Heard.

. Rule. By consent rule is made returnable forthwith.

2. This petition is directed against the notices dated 10th February, 2002 and 16th March, 2005 incorporated at Exh.D and Exh.E respectively calling upon the petitioner Smt.Rashmi H. Ahuja, one of the directors of M/s.Sigma Delta Products Private Limited ("Company" for short) to pay the outstanding dues, due and recoverable from her husband Shri Haresh Ahuja, who is the Managing Director of the Company. So far as notice dated 16th March, 2005 is concerned, it is addressed to the Secretary, Khar Adelmar Co-op. Housing Society

Ltd. requesting them not to transfer the flat owned by the petitioner along with her husband being Flat No.601, Khar Adelmar Co-op. Housing Society Ltd., 16th Road, Khar (West), Mumbai- 400 052 to any other person without permission of the Commissioner of Central Excise, Mumbai.

3. The learned counsel appearing for the petitioner contends that section 11-B of the Central Excise Act, 1944 ("Act" for short) empowers the Central Government to recover the arrears of dues by proceeding against the properties belonging to the persons from whom the arrears are recoverable. The arrears in the present are, admittedly, recoverable from the Company, which is an independent entity in the eye of law. According to him, petitioner is an absolute owner of the property i.e, the flat described hereinabove. The same does not belong to the Company. The petitioner, thus, contends that the impugned action is not only in violation of section 11-B of the Act but is contrary to the established principles of law. He, thus, submits that the action complained of is ab-initio and null and void. He placed reliance on the judgment of this Court dated 17th August, 2005 in W.P.No.7015 of 2002 (**Mr.S.P.Mittal v. Dy.Commissioner**) and contends that the challenge is squarely covered by this judgment.

4. Mr.Govilkar, learned counsel appearing for the respondents-Revenue tried to distinguish the above judgment. However, he could not take his submission to the logical end.

5. Having considered the rival submissions and in view of law laid down by this Court in the case of **Mr.S.P.Mittal** (supra), we have no option but to quash and set aside the impugned notices dated 10th February, 2002 and 16th March, 2005 incorporated at Exh.D and Exh.E respectively.

6. In the result, petition is allowed. Rule is made absolute in terms of the above order with no order as to costs.

(J.P.DEVADHAR, J.) **(V.C.DAGA, J.)**